

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-186063

DATE: July 19, 1976

MATTER OF: Curtiss-Wright Corporation

61158

97906

## DIGEST:

Agency may use data supplied with restrictive legend to evaluate drawings submitted by other offerors so long as such data is not released outside the Government. Moreover, where it appears that drawings were furnished to agency without restriction, GAO is precluded from concluding that Government does not have unrestricted rights in such drawings.

Curtiss-Wright Corporation (CWC) protests the award of any contract under request for proposals (RFP) No. F41608-76-R-7875 on the basis that the making or performance of such contract would involve the utilization of CWC proprietary data.

The RFP called for the supply of 1,132 aircraft engine pinions described as Curtiss-Wright Corporation Part Number 171242 or Aircraft Supplies Part Number AS171242 or Trylon Machine and Gear Co. Part Number EG171242. CWC maintains that the pinion-reduction gear is described by Curtiss-Wright Corporation Drawing Number 171242, which was furnished to the Government under two prior contracts between CWC and the Air Force. CWC alleges that this data remained proprietary to CWC under the terms of the contracts in question.

The Air Force reports that no CWC data was published in the RFP or distributed outside the Government in any other fashion and that both Aircraft Supplies and Trylon Machine and Gear submitted their own drawings and specifications. According to the Air Force, CWC's data was used only to check those drawings. The Air Force argues that this limited use of the CWC data was in accordance with the decision of this Office in 49 Comp. Gen. 471 (1970) in which we held that the use of proprietary data for comparison purposes was proper. Further,

the Air Force claims that there is a question as to the proprietary nature of the CWC drawing, since although Revisions G and H of the drawing were provided with a restrictive legend, Revisions E and F of the drawing were provided to the Government without restrictive legends.

CWC, on the other hand, claims that the Air Force is mistaken about the revised drawing which the Air Force states was submitted without a restrictive legend, and argues that insofar as the agency's use of the CWC drawing was consistent with the decision in 49 Comp. Gen. 471, supra, that decision was incorrectly decided.

This Office has on several occasions provided some protection against the unauthorized disclosure of proprietary data by directing cancellation of solicitations which improperly disclosed such data. 49 Comp. Gen. 28 (1969); 43 id. 193 (1973); 41 id. 148 (1961). Here, no claim is made that the RFP improperly reveals CWC's proprietary data. Rather, CWC asserts that the Air Force made improper use of the restricted data by using it to evaluate drawings submitted by CWC competitors. However, as indicated above, we have held that the Government may properly use data in which it has limited rights for such comparison purposes. 49 Comp. Gen. 471, supra. We reached that conclusion after a careful and thorough consideration of the purpose of and policy behind the use of the legend giving the Government limited rights in data furnished under Government contracts, and have consistently adhered to it. See Garrett Corporation, B-182991, B-182903, January 13, 1976, 76-1 CPD 20 and cases cited therein. Although CWC argues at length that our holding in 49 Comp. Gen. 471 was incorrect, we do not find CWC's position in this regard to be persuasive. Accordingly, we cannot agree that the Air Force's use of the CWC data in this case was improper.

Furthermore, it is not clear from the record before us that the Government has only limited rights in the CWC data. Although CWC asserts that it never furnished the data in question to the Air Force without a restrictive legend on it, the Air Force records indicate the contrary. In this regard, the Air Force has furnished this Office with copies of Revisions E, F, G and H of drawing 171242. Revisions E and F show no restrictive legend whatsoever. Although this does not unequivocally establish that the drawings were furnished without restriction, it does, in the absence of probative evidence to the contrary, preclude us from concluding that the Government does not have unrestricted rights in the drawing.

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In view of these circumstances, the protest is denied.

Deputy

*R. F. K. + 1/2*  
Comptroller General  
of the United States